

REMARKS

I. General

Claims 1 – 18 are pending. Claims 1 -18 stand rejected. Claims 3, 7, 11 and 17 are amended and the remaining claims are unchanged. The issues in the current Office Action are as follows:

- Claims 3, 6-8, 11, 14, 17 and 18 are objected to because of informalities.
- Claims 1, 2, 9, 10 and 15 stand rejected under 35 U.S.C. §102(e) as being anticipated by U.S. Publication No. 2003/0200311 (hereinafter “Baum”);
- Claims 3, 7, 11, 17 stand rejected under 35 U.S.C. §102(e); and as anticipated by or, in the alternative under 35 U.S.C. §103(a) as obvious over Baum;
- Claims 4, 5, 6, 8, 12, 13, 14, 16 and 18 under 35 U.S.C. §103(a) as being unpatentable over Baum in view of U.S. Publication No. 2003/0072330 (hereinafter “Yang”).

II. Claim Objections

In item 1 of the Office Action, the Examiner objected to claims 3, 6-8, 11, 14, 17 and 18. In response the Applicant has amended these claims in accordance with the Examiner’s suggestion. Accordingly, Applicant points out that the Examiner’s objections have been obviated.

III. Rejections under 35 U.S.C. § 102(e)

In item 2 of the Office Action, the Examiner rejected claims 1, 2, 9, 10 and 15 under 35 U.S.C. §102(e) as being anticipated by Baum.

It is well settled that to anticipate a claim, the reference must teach every element of the claim, see M.P.E.P. §2131. Moreover, in order for a prior art reference to be anticipatory under

35 U.S.C. § 102 with respect to a claim, “[t]he elements must be arranged as required by the claim,” see M.P.E.P. § 2131, citing *In re Bond*, 15 U.S.P.Q.2d 1566 (Fed. Cir. 1990).

Furthermore, in order for a prior art reference to be anticipatory under 35 U.S.C. § 102 with respect to a claim, “[t]he identical invention must be shown in as complete detail as is contained in the . . . claim,” see M.P.E.P. § 2131, citing *Richardson v. Suzuki Motor Co.*, 9 U.S.P.Q.2d 1913 (Fed. Cir. 1989). The Applicant respectfully asserts that the rejection does not satisfy these requirements.

Claim 1 recites “communicating between a network trouble shooting center (NTC) and network analyzers (NAs) monitoring respectively corresponding communication lines . . . to provide quality of service statistics for data streams transmitted . . . and associate with a respective telephone call.” The Examiner indicated that “providing a quality of service” is disclosed in paragraph 70 of Baum. However, the cited section of Baum makes no mention whatsoever of providing a quality of service statistic for data streams. In fact nowhere in Baum is the quality of service even mentioned let alone provided. Therefore, it is respectfully submitted that Baum does not teach all of the features of claim 1 in its entirety. Reconsideration and withdrawal of the rejection are respectfully requested.

Claim 9 recites “a network troubleshooting center (NTC) communicating with the network analyzers (NAs) to provide quality of service statistics for data streams....” The Examiner asserted that this limitation is disclosed at paragraphs 70, 128, 129 and 130 of Baum. However, again, none of the cited paragraphs mention quality of service statistics, as set forth in the claim. The Examiner asserted that physical location and customer name are quality of service data. However, these are not quality of service data. Examples of quality of service information are described in paragraph 49 of the present specification. According to Baum, this information is not monitored much less desired. Therefore, it is respectfully submitted that Baum does not teach all of the features of claim 9 in its entirety and is therefore believed allowable over Baum. Furthermore, dependent claim 10 is believed allowable as well based on its dependency from allowable claim 9. Reconsideration and withdrawal of the rejection are respectfully requested.

Claim 15 of the present application recites “means for communicating between the NTC and the NAs to provide quality of service statistics for data streams...” The Examiner asserts that this limitation is disclosed at paragraph 126 of Baum. However, the cited section does not disclose any quality of service statistics communicated by any means between the asserted NTC and the asserted Nas, as set forth in the claim. Therefore, it is respectfully submitted that Baum does not teach all of the features of claim 15 in its entirety, and is therefore believed allowable over Baum. Reconsideration and withdrawal of the rejection are respectfully requested.

IV. Rejections under 35 U.S.C. § 102/§103

In item 4 of the Office Action claims 3, 7, 11, 17 were rejected under 35 U.S.C. §102(e) as anticipated by or, in the alternative under 35 U.S.C. §103(a) as obvious over Baum.

To establish a *prima facie* case of obviousness under 35 U.S.C. § 103(a), the Examiner must consider the four Graham factual inquiries. Further, three basic criteria must be met. First, there must be some reason, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, that one could modify the reference or to combine reference teachings. Further, it is “important to identify a reason that would have prompted a person of ordinary skill... to have combined the [prior art] elements in the way that the claimed invention does.” *KSR Int’l Co. v. Teleflex, Inc.*, No. 05-1350, 550 U.S. ____ (2007); 127 S.Ct. 1727, 82 USPQ2d 1385. Second, there must be a reasonable expectation of success (i.e. the results of the combination are predictable). *See* M.P.E.P. § 2131. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. *See* M.P.E.P. § 2143.03. The Applicant respectfully asserts that the rejection does not satisfy the basic criteria.

As discussed above, independent claims 1 and 9 are believed allowable over Baum. Further, the Examiner has not provided a rationale as to why it would be obvious to modify Baum to include the above identified deficiencies. Therefore, claim 3, which depends from claim 1, is believed allowable, at least based on its dependency from allowable claim 1. Likewise, claim 11 is believed to be allowable, at least based on its dependency from independent claim 9.

Claim 7 of the present invention recites “collecting quality of service data by the NAs for data streams associated with the telephone call ... and providing quality of service information by the NAs to the NTC based on the collected quality of service data.” Claim 17 includes similar limitations. The Examiner asserts that paragraph 127 of Baum discloses this feature. However, the cited section does not disclose quality of service information or data. The cited section discloses data related to identifying the data stream, but does not disclose quality of service data for the stream. Further, the Examiner has not provided a reason why one would modify Baum to include providing quality of service information to the NTC. Therefore, it is respectfully submitted that the Examiner has failed to make a *prima facie* case of anticipation or obviousness. Thus, claim 7 is believed allowable over Baum. Furthermore, for similar reasons claim 17 is believed allowable as well. Reconsideration and withdrawal of the rejection are respectfully requested.

V. Rejections under 35 U.S.C. §103

In item 6 of the Office Action the Examiner rejected claims 4, 5, 6, 8, 12, 13, 14, 16 and 18 under 35 U.S.C. §103(a) as being unpatentable over Baum in view of Yang et al., U.S. Patent Application Publication No. 2003/0072330, hereinafter “Yang.”

To establish a *prima facie* case of obviousness under 35 U.S.C. § 103(a) the Examiner must consider the four Graham factual inquiries. Further, three basic criteria must be met. First, there must be some reason, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, that one could modify the reference or to combine reference teachings. Further, it is “important to identify a reason that would have prompted a person of ordinary skill... to have combined the [prior art] elements in the way that the claimed invention does.” *KSR Int'l Co. v. Teleflex, Inc.*, No. 05-1350, 550 U.S. ____ (2007), 127 S.Ct. 1727, 82 USPQ2d 1385. Second, there must be a reasonable expectation of success (i.e. the results of the combination are predictable). See M.P.E.P. § 2131. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. See M.P.E.P. § 2143.03. The Applicant respectfully asserts that the rejection does not satisfy the basic criteria.

Claims 4, 5, 6, 8, 12, 13, 14, 16 and 18 depend from allowable independent claims 1, 7, 9, 15 or 17, and therefore inherit all of the limitations of the independent claims. For the reasons stated above these independent claims are believed allowable over Baum. The addition of Yang does not remedy the identified deficiencies of Baum, nor has the Examiner provided a reason that Yang would correct these deficiencies. Therefore, it is respectfully submitted that the combination of Baum and Yang does not disclose all of the features of the independent claims, and thus dependent claims 4, 5, 6, 8, 12, 13, 14, 16 and 18 are believed allowable over the cited combination. Reconsideration and withdrawal of the rejections are respectfully requested.

VI. Conclusion

In view of the above, applicant believes the pending application is in condition for allowance. Reconsideration and allowance of the pending claims is respectfully requested.

Applicant believes no fee is due with this response. However, if a fee is due, please charge Deposit Account No. 50-1078, under Order No. 10030630-1 from which the undersigned is authorized to draw.

<p>I hereby certify that this paper (along with any paper referred to as being attached or enclosed) is being transmitted via the Office electronic filing system in accordance with § 1.6(a)(4).</p> <p>Dated: September 11, 2007</p> <p>Signature: <u>Donna Forbit</u> (Donna Forbit)</p>

Respectfully submitted,

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